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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/516,967

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Peter C. Brazier

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06/18/2008

Legal Department (M-495)

P.O. Box 1926

Spartanburg, SC 29304

EXAMINER

JUSKA, CHERYL ANN

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

06/18/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/516,967	Applicant(s) BRAZIER ET AL.	
	Examiner Cheryl Juska	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-27 and 31-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-27 and 31-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination (RCE) under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 9, 2008, has been entered.

Response to Amendment

2. Applicant's amendment, originally filed as an Amendment After Final on March 7, 2008, has been entered per the RCE. Claims 22 and 34 have been amended as requested. Claims 1-21 and 28-30 have been cancelled, while new claims 47 and 48 have been entered. Thus, the pending claims are 22-27 and 31-48.

Double Patenting

3. Claims 22-27 and 31-46 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 29-56 of copending Application No. 10/516,861 for the reasons of record.

4. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 22 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claim 22 has been amended to limit the mat to being “formed at a temperature of less than 165°C and at pressure of less than 30 psi.” However, it is unclear what applicant intends to encompass by “formed.” What process steps (e.g., curing binder, bonding of textile surface and elastomer backing, etc.) have the recited temperature and pressure?

Claim Rejections - 35 USC § 103

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
9. Claims 22-27 and 31-44 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,968,631 issued to Kerr in view of US 6,896,964 issued to Kvesic as set forth in section 6 of the last Office Action (Final Rejection mailed 01/07/08).

Applicant has amended the claim to limit the mat to being “formed at a temperature of less than 165°C and at pressure of less than 30 psi.” However, said amendment is insufficient to overcome the standing rejection.

First, said amendment is a method limitation in a product claim. As such, said limitation is not given patentable weight at this time. In order to be given patentable weight, a method

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limitation must materially effect the final product in a structural manner. The presence of process limitations on product claims in which the product does not otherwise patentably distinguish over the prior art, cannot impart patentability to the product. *In re Stephens*, 145 USPQ 656.

Secondly, in the event said method limitation is given patentable weight, Kvesic teaches cold curing of the elastomer crumb composite at temperatures from ambient to about 200°F and at ambient pressures. Hence, Kvesic teaches the temperature and pressure range claimed by applicant. Therefore, said amendment is insufficient to overcome the prior art rejection.

10. Claims 45 and 46 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,968,631 issued to Kerr in view of US 6,896,964 issued to Kvesic as applied to claim 22 above and in further view of WO 96/38298 issued to Burke as set forth in section 7 of the last Office Action.

11. New claims 47 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,968,631 issued to Kerr in view of US 6,896,964 issued to Kvesic as applied to claim 22 above.

Said new claims are also rejected since Kvesic teaches cold curing at ambient temperature and pressure.

Response to Arguments

12. Applicant's arguments filed with the RCE have been fully considered but they are not persuasive.

13. Applicant traverses the rejection of the claims by asserting applicant has a priority date of June 13, 2002 from British priority document GB 0214103, while Kvesic '964 only has an

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effective filing date of February 28, 2003 (Amendment, pages 7, 3rd paragraph – paragraph spanning pages 7-8). The examiner agrees with the effective date of the Kvesic '964 reference, but disagrees with applicant's asserted priority date. Paragraph 7 of the first Office Action (mailed 06/25/07) states:

While the present invention claims priority to UK application 214103.4 having a filing date of 06/13/02, this UK application, however, does not appear to provide sufficient support for the presently claimed subject matter of voids in the elastomer backing. For this reason, at best, the effective filing date for this application is 03/12/03, the foreign priority date of application UK 305867.4 If applicant disagrees with examiner's assessment, it is suggested that applicant cite the passage(s) in this application, which provide support for the claimed subject matter.

Hence, applicant has not met its burden that support for the claimed subject matter is provided by GB 0214103. Therefore, the Kvesic '964 reference is still available as prior art.

14. The rest of applicant's arguments are directed to the parent application of Kvesic '964, US 6,821,623 (Amendment, page 8, 2nd – 5th paragraphs). However, since Kvesic '623 has not been applied in a rejection of the claims, said arguments are irrelevant. Despite this fact, it is noted the present rejection is based upon the obviousness of substitution of the rubber backing on the Kerr floor mat with another known floor mat rubber backing (e.g., the Kvesic rubber backing comprising a plurality of voids). One skilled in the art would readily understand that said substitution would entail producing the Kvesic rubber mat as taught by Kvesic and not attempt to substitute the materials of Kvesic in the process of Kerr (i.e., extrusion process). One would recognize, as applicant has, that the materials of Kvesic are not suited for extrusion. However, this does not suggest that said substitution would not be obvious. It merely renders obvious the substitution of the Kvesic rubber backing made by the Kvesic process for the backing of the Kerr floor mat. Note applicant is not claiming a process or even a product-by-process claim. Hence,

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the substitution of one known floor mat rubber backing for another known floor mat rubber backing is held obvious over the prior art. The rejection is maintained.

15. With respect to applicant's arguments traversing the rejection over Burke (Amendment, page 9, 1st paragraph), Burke need not teach a crumb rubber backing since this feature is taught by the other references. Additionally, Burke teaches the edging strips are not formed of the rubber backing material itself but rather are joined to the rubber backing (abstract). As such, one would still have an expectation of success in combining the teachings of the three references since the edging strips are not required be of the same material as the rubber backing. Therefore, said rejection is also maintained.

Conclusion

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached at 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

17. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Cheryl Juska/
Primary Examiner
Art Unit 1794

cj
June 17, 2008